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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/540,779	03/31/2000	Hans Eberle	1004-4253	2418
22120	7590	04/29/2005		EXAMINER
ZAGORIN O'BRIEN GRAHAM LLP 7600B N. CAPITAL OF TEXAS HWY. SUITE 350 AUSTIN, TX 78731			MILLS, DONALD L	
			ART UNIT	PAPER NUMBER
			2662	

DATE MAILED: 04/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action Before the Filing of an Appeal Brief</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/540,779	EBERLE ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Donald L Mills	2662

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 April 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a)  The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2.  The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

- (a)  They raise new issues that would require further consideration and/or search (see NOTE below);
- (b)  They raise the issue of new matter (see NOTE below);
- (c)  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 6-8, 10-15, 18, 22, 23, 27, 28 and 32.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.

12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_

13.  Other: See PTO-892.

  
JOHN PEZZLO  
PRIMARY EXAMINER

Continuation of 11. NOTE:

The Examiner appreciates the Applicant's remarks for providing further clarification

Rejection Under 35 USC § 103

On page 2 of the remarks, regarding claim 8, Applicant argues neither Turner nor Gantner disclose, teach, or otherwise make obvious *a synchronization operation that includes at least one of a lock operation, an atomic read-modify-write operation, and a fetch-and-increment operation*. The Examiner respectfully disagrees. Gantner et al. teaches the use of a channel that is used for synchronization information. See at least col. 1, lines 33-35. It is inherent that the system can distinguish among synchronization information and non-synchronization information in order to send the synchronization information over the correct channel. For example, it is inherent in ISDN that each ISDN frame comprises a header comprising F-bits utilized for synchronization (See Stallings, page 599, Figure 18-7.). The F-bits are transmitted and received by both the network and terminal for synchronization, otherwise framing bits would be unnecessary. The Examiner interprets the reading of the F-bit field for synchronization as a lock operation. Therefore, Gantner teaches *a synchronization operation that includes at least one of a lock operation, an atomic read-modify-write operation, and a fetch-and-increment operation*.

Note: the “newly added reference is added only as directly corresponding evidence to support the prior common knowledge finding, and it does not result in a new issue or constitute a new ground of rejection.” See MPEP 2144.03. The Examiner only provides the new reference to show that the Examiner’s previous assertion was indeed

well-known in the art at the time of the invention. Because the new reference does not present any new issue or new grounds of rejection, the finality of the office action is maintained.

On page 3 of the remarks, regarding claim 14, the Applicant argues that neither Turner, Whitehill, nor Fluss disclose, teach, or otherwise make obvious *during node initialization, a node coupled to the output port listens to grant packets and uses the unique identifier as its node identifier in subsequent transactions over the data network*. The Examiner respectfully disagrees. Fluss teaches where “small” packets are given higher priority than packets of sustained data flow. See col. 7, lines 22-39. Some of these small packets include control packets and acknowledgment packets— acknowledgement packets act similarly as the CTS message in Whitehill et al. Fluss also teaches that the router (node listening during node initialization) reads the header of incoming downstream IP packets, which comprise a source IP address field that matches a corresponding port (unique identifier) in the router table. See col. 6, lines 61-65.

On page 3 of the remarks, regarding claim 15, the Applicant argues that neither Turner, Whitehill, nor Fluss disclose, teach, or otherwise make obvious *the grant indication is provided at a fixed time in each frame, a frame being a predetermined time period, and the grant indication synchronizes nodes of the network to the frame*. The Examiner respectfully disagrees. Fluss teaches that the router reads the header of incoming downstream IP packets (grant indication at a fixed time in each frame, synchronizes nodes of the network to the frame). See col. 6, lines 61-65.

On page 3 of the remarks, regarding claim 18, the Applicant argues that neither Turner, Whitehill, nor Fluss disclose, teach, or otherwise make obvious *the request*

*indication, the grant indication and an acknowledge indication are always sent at different times over the low latency channel, thereby avoiding collision....* The Examiner respectfully disagrees. Whitehill teaches that when network traffic is heavy, the system will send the RTS and other messages at random intervals so as to avoid collisions (See at least col. 8, lines 42-53.) Therefore, the combination of the request, grant and acknowledgement are always sent at different times because the RTS is transmitted at a random interval.

On page 4 of the remarks, regarding claim 22, the Applicant argues that neither Turner, Whitehill, nor Fluss disclose, teach, or otherwise make obvious *transmitting smaller sized data packets across low latency channel with limited scheduling* (emphasis added). The Examiner respectfully disagrees. Fluss teaches assigning high transmittal priority to data packets addressed to users who have more recently received a previous data packet and low transmittal priority to data packets addressed to users who have relatively less recently received a previous data packet (See abstract). “Small” packets are given higher priority than packets of sustained data flow (See col. 7, lines 22-39.) Some of these small packets include control packets and acknowledgment packets, which are transmitted across low latency channels. Fluss teaches that the small packets given higher priorities can be used in the building or tearing down of connections, which are transmitted on a limited scheduling because they are only transmitted when a connection is made, destroyed and acknowledged. Which is unlike payload data that is continually transmitted or highly scheduled. Further, the Applicant refers to page 8, lines 12-20 of the specification as referring to “limited scheduling” (as shown below):

Each of channels 130 and 140 schedule transmissions of data packets through data network system 100 according to requirements of the respective identified features of groups of data packets. Channel 130, which is designed to transmit low latency packets, uses **limited scheduling because an efficient channel transmitting low latency packets requires quick scheduling decisions**. Additionally, low latency packets are typically smaller-sized packets that do not cause long lasting blockages. The transmission error rate, therefore, may be of less concern for low-latency channel 130 because an error affects a relatively short data transfer. Therefore, retransmission of a packet that had a transmission error has an acceptable overhead.

However, this passage and the rest of the specification fail to establish any definition of “limited scheduling,” instead it merely states that limited scheduling should be used for efficiency purposes. Therefore, the Examiner has made their own interpretation as consistent with the both the claims and specification. The Examiner’s interpretation is both proper and logical as set forth above, since the low latency channel of Fluss is used for high priority small packets during channel construction and deconstruction, i.e., like the Applicant’s invention. Therefore, Turner, Whitehall and Fluss, in combination teach *transmitting smaller sized data packets across low latency channel with limited scheduling*.